UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

November 8, 2018 at 10:30 a.m.

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1. 18-90339-E-7 **KIMBERLY SOLARIO**
18-9014 **NEU-2**

DE JONG V. SOLARIO

MOTION TO STAY DISCOVERY AND/OR MOTION TO WAIVE INITIAL DISCLOSURES, DISCOVERY CONFERENCE, AND DISCOVERY PLAN
10-2-18 [8]

Final Ruling: No appearance at the November 8, 2018 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant (*pro se*) on October 2, 2018. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Motion to Stay Discovery and/or to Waive Initial Disclosures, Discovery Conference and Discovery Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Stay Discovery is granted, pending further order of the court, with the hearing continued to 2:00 p.m. on November 29, 2018, to be conducted in conjunction with the Status Conference for determination of further continuance based on the reported status of the appeal.

Plaintiff in this Adversary Proceeding, Craig De Jong ("Plaintiff") seeks an order staying discovery pending further order of the court and relieving the parties from the requirement to provide initial disclosures, conduct a discovery conference, or prepare a discovery plan.

Plaintiff argues stay of discovery is in the best interest of the parties and judicial economy here because the non-dischargeability Adversary Proceeding is significantly reliant on an underlying state court action. Plaintiff has filed a motion relief from stay (Dckt. 41) set to be heard the same day as the hearing on this Motion for in order to pursue appeal of the underlying state court action. Plaintiff believes the appeal will make *res judicata* and collateral estoppel applicable, which would significantly limited any discovery.

No opposition has been filed to this Motion.

APPLICABLE LAW

Federal Rule of Civil Procedure 26 applies in a bankruptcy case adversary proceeding. FED. R. BANKR. P. 7026. That rule permits the court discretion to alter the requirements of initial disclosure and conference of the parties. The rule specifically provides:

> (a) Required Disclosures.
>
> > (1) Initial Disclosure.
> >
> > > (A) In General. **Except as exempted** by Rule 26(a)(1)(B) or as otherwise stipulated **or ordered by the court**, a party must, without awaiting a discovery request, provide to the other parties: . . .
>
> (f) Conference of the Parties; Planning for Discovery.
>
> > (1) Conference Timing. **Except in a proceeding exempted from initial disclosure** under Rule 26(a)(1)(B) **or when the court orders otherwise**, the parties must confer as soon as practicable—and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b) . . .

FED. R. CIV. P. 26(a)(1), (f)(1).

DISCUSSION

Plaintiff's argument is well-taken. The court has granted the motion for relief (Dckt. 41), allowing the parties to pursue the state court litigation to finality. It may be that resolution of that action results in a claim for *res judicata* and collateral estoppel, rendering extensive discovery unnecessary. Therefore, stay of the initial disclosure and conference requirements is in the best interest of both parties and the Motion is granted.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion to Stay Discovery and/or to Waive Initial Disclosures, Discovery Conference and Discovery Plan filed by Plaintiff in this Adversary Proceeding, Craig De Jong ("Plaintiff") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the requirements of initial discovery and conference of the parties, pursuant to Federal Rule of Civil Procedure 26 are stayed pending the resolution of the state court litigation in the Superior Court of California, County of San Joaquin, *De Jong v. Beach et al*, case no. 39-2014-00314863-CU-OR-STK /STK-CV-URP-2014-0008188, and on appeal in the California Court of Appeal for the Third Appellate District, case nos. C085462 and C086926 ("State Court Litigation"), pending further order of the court.
>
> **IT IS FURTHER ORDERED** that the hearing is continued to **2:00 p.m. on November 29, 2018**, to be conducted in conjunction with the Status Conference for determination of further continuance based on the reported status of the appeal.

2. **17-90346-E-7** **ENRIQUEZ/LISA SANCHEZ** **MOTION FOR COMPENSATION BY THE LAW OFFICE OF HEFNER, STARK & MAROIS, LLP FOR AARON A. AVERY, TRUSTEE'S ATTORNEY(S)**
HSM-23 **Thomas Hogan** **10-18-18 [116]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's, Debtor's Attorney, Chapter 7 Trustee, creditors, and Office of the United States Trustee on October 18, 2018. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed $1,000.00).

The Motion for Allowance of Professional Fees was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, **----------**.

The Motion for Allowance of Professional Fees is granted.

Hefner, Stark & Marois, LLP, the Attorney ("Applicant") for Gary Farrar, the Chapter 7 Trustee ("Client"), makes a first Interim Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period June 26, 2017, through July 31, 2018. The order of the court approving employment of Applicant was entered on June 26, 2017. Dckt. 21. Applicant requests fees in the amount of $69,203.00. Applicant has incurred costs, but does not seek costs in its First Interim Request for the Allowance of Fees in this case.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). An attorney must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

APPLICABLE LAW

Reasonable Fees

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney's services, the manner in which services were performed, and the results of the services, by asking:

A. Were the services authorized?

B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?

C. Are the services documented adequately?

D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?

E. Did the attorney exercise reasonable billing judgment?

In re Garcia, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

Lodestar Analysis

For bankruptcy cases in the Ninth Circuit, "the primary method" to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves "multiplying the number of hours reasonably expended by a reasonable hourly rate." *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar analysis cab be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

Reasonable Billing Judgment

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to

a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant's services for the Estate include general case administration, asset investigation, asset disposition, claims services and adversarial litigation. The Estate has $120,000.00 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to Client and the Estate and were reasonable.

FEES AND COSTS & EXPENSES REQUESTED

Fees

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 29.30 hours in this category (3.4 not being billed). Applicant performed case initiation services, including initial evaluation and conflicts analysis for employment of counsel; drafted an application to employ counsel, and applications to employ the Trustee's Certified Public Accountant; reviewed Debtor's bankruptcy filings and strategically planned disposition and administration of estate assets.

Asset Investigation: Applicant spent 29.60 hours in this category (0.2 not being billed). Applicant reviewed and analyzed issues to advise Client with numerous pre-petition real property transactions and encumbrances related to the Debtors and their previous house-flipping business. Applicant also advised Client with questions regarding the continued 341 Meeting of the Creditors, and investigated issues, documents, and other evidence regarding the Strawflower and Wilma properties.

Asset Disposition: Applicant spent 72.50 hours in this category (10.43 not being billed). Applicant advised Client in connection with issues related to administration of the Strawflower and Wilma properties following avoidance of pre-petition transfers of those assets; advised and represented Client in

connection with formal termination of tenant occupancy at Wilma property; and advised and represented Client in long-running negotiations regarding claims of various stakeholders.

Claims: Applicant spent 17.60 hours in this category (1.0 not being billed). Applicant reviewed legal, procedural and factual issues regarding proofs of claim; advised Client in the development of strategy for resolution of disputed claims; engaged in numerous communications regarding the claims; advised and represented Client with settlement strategy and negotiation issues.

Litigation: Applicant spent 77.70 hours in this category (3.0 not being billed). Applicant researched legal and factual issues in connection with pre-petition real property transfers involving Debtors and advised Client accordingly; Drafted and filed three complaints; drafted stipulations and orders; and attended adversary proceedings.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	**Time**	**Total Fees Computed Based on Time and Hourly Rate**
Aaron Avery	214.80	$64,801.00
Howard Nevins	6.4	$2,532.00
Kirk Giberson	5.50	$1,870.00
Total Fees for Period of Application		$69,203.00

FEES AND COSTS & EXPENSES ALLOWED

Fees

The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. First Interim Fees in the amount of $69,203.00 are approved pursuant to 11 U.S.C. § 331, and subject to final review pursuant to 11 U.S.C. § 330, and authorized to be paid by the Chapter 7 Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

The court authorizes the Chapter 7 Trustee to pay 90% of the fees allowed by the court. (The court allows a higher interim fee payment in light of Applicant not seeking recovery of costs as part of this Motion.)

Applicant is allowed, and the Chapter 7 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees $62,282.70

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Hefner, Stark & Marois, LLP ("Applicant"), Attorney for Gary Farrar, the Chapter 7, ("Client") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Hefner, Stark & Marois, LLP is allowed the following fees (no expenses having been requested as part of this First Interim Fee Application) as a professional of the Estate:
>
> Hefner, Stark & Marois, LLP, Professional employed by the Chapter 7 Trustee
>
> Fees in the amount of $69,203.00
>
> as an interim allowance of fees and expenses pursuant to 11 U.S.C. § 331 and subject to final review and allowance pursuant to 11 U.S.C. § 330. The Trustee is authorized to be pay 90% of the allowed Interim Fees, which is $62,282.70, from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.

3. **10-90080-E-7** **FRED EICHEL** **MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION**
JAD-2 **Jessica Dorn** **9-7-18 [31]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor's Attorney, and Office of the United States Trustee on September 7, 2018. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

The Motion for Sanctions for Violation of the Discharge Injunction has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Sanctions for Violation of the Discharge Injunction is continued to December 11, 2018 at 1:30 p.m. (Specially Set Time and Location - Sacramento Division Courthouse)

Due to a conflict, the judge set to hear the Motion is unavailable for the originally noticed hearing day. Given the complexities of the matter, the court shall continue the Motion to December 11, 2018 at 1:30 p.m., also allowing the court more time to review and prepare the issues presented.

The present Motion for Sanctions for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Debtor Fred Eichel ("Movant"). The claims are asserted against Creditor Scarlett Fiorini ("Respondent").

DISCUSSION

Given the complexity of issues raised in this matter, the court shall continue the hearing on the Motion to December 11, 2018 at 1:30 p.m.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Sanctions for Violation of the Automatic Stay by Debtor Fred Eichel ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion for Sanctions for Violation of the Discharge Injunction is continued to December 11, 2018 at 1:30 p.m., to be heard in Courtroom 33 of the United States Bankruptcy Court, Sacramento Division.

4. **18-90494-E-7** **MELINDA BROOME** **MOTION TO CONVERT CASE TO CHAPTER 13**
JBA-1 **Joseph Angelo** **10-9-18 [26]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 9, 2018. By the court's calculation, 30 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice).

The Motion to Convert was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, ----------.

The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is granted, and the case is converted to one under Chapter 13.

Melinda Broome ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor in her Declaration (Dckt. 28) that proceeding under Chapter 13 is in her best interest. Debtor explains she is trying to pay off her vehicle loan through the plan.

TRUSTEE'S RESPONSE

The Chapter 7 Trustee, Gary Farrar ("Trustee"), filed a Response to Debtor's Motion October 24, 2018. Dckt. 35. The Trustee does not oppose the Motion so long as (1) this Motion is not construed as

one to confirm the Chapter 13 plan, (2) all approved administrative expenses from the Chapter 7 case are included in any confirmed Chapter 13 plan, and (3) in the event Debtor fails to make plan payments, the case should be converted back to Chapter 7 and not dismissed.

DISCUSSION

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. The Trustee does not oppose the Motion.

Decision to Seek Conversion

Debtor filed this case as one under Chapter 7 seeking to discharge her debts. Based on the Schedules filed by Debtor, it appeared that there was not any recoverable value for a distribution to creditors. After review, the Chapter 7 Trustee determined that there was value in Debtor's real property and on August 31, 2018, obtained authorization to employ a real estate broker to assist in the marketing and sale of the real property. Dckt. 21.

On September 6, 2018, Debtor filed a Motion to Convert this Case to one under Chapter 13. Dckt. 22. The Motion merely states that Debtor elects to convert this case. The court denied without prejudice Debtor's *ex parte* request to convert the case. Order, Dckt. 24. The court's Order directed Debtor to file a noticed motion to convert.

Debtor has filed her noticed Motion to Convert (Dckt. 26), which is supported by her Declaration (Dckt. 28). In the Declaration Debtor states that she is seeking the conversion because she wants to pay her vehicle loan through a plan. Declaration ¶ 7, Dckt. 28. This is a bit "curious" in light of the Ex Parte Motion to Dismiss having been filed just days after the court granted the Chapter 7 Trustee's Motion to Employ the Real Estate.

Debtor has also provided financial information and a draft Chapter 13 Plan as Exhibit A, Dckt. 29. The draft Chapter 13 Plan provides for a 6% dividend for creditors holding general unsecured claims. The additional provisions (improperly typed above the signature line of the Plan instead of the required separate page) provide for the payment of Chapter 7 Trustee fees, Chapter 7 Trustee's Attorney's fees, and the Chapter 7 Trustee's Realtor fees. Presumably, the 6% dividend is being computed after the Debtor paying approximately $3,400.00 in these Chapter 7 administrative expenses.

If the Chapter 7 administrative expenses were not being paid, then there would be an additional $3,400.00 for creditors holding general unsecured claims. This would be an additional 16.3% dividend to creditors holding general unsecured claims.

The sought after dismissal/conversion days after learning of the Chapter 7 Trustee's intention to liquidate the real property and pay creditors appears to be a strategy resulting from Debtor's discovery that the real property would not slip through the Chapter 7 case, and the expense of the Chapter 7 Trustee

would be incurred. Now, Debtor wants the creditors holding the unsecured claims to pay the administrative expenses caused by the Debtor's strategy.

In some cases, the court when converting such a case expressly conditions it on the Debtor paying the Chapter 7 administrative expenses and the unsecured dividend computed without regard to such expenses. It is not clear in this case whether such full amount, or what amount, if any, should be shouldered by the Debtor for his case filing and conversion strategies.

The court highlights this for the benefit of the judge hearing the Chapter 13 case so that he can take this into account in assessing the Debtor's good faith with the Chapter 13 Plan being proposed.

Additionally, this is highlighted for the benefit of the judge hearing the Chapter 13 case so that he is aware that the Chapter 7 Trustee believes there are assets to be administered, and that if the Debtor should desire to exercise her qualified right to dismiss the Chapter 13 case rather than pursue a Plan, that judge can consider reconverting it Chapter 7.

The Motion is granted and the case is converted to one under Chapter 13.

The court shall issue a minute order substantially in the following form holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Convert filed by Melinda Broome ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Convert is granted, and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.
>
> As noted in the Civil Minutes, the conversion of this case raises issues for the Judge hearing the Chapter 13 case relating to the proper computation of the unsecured dividend and whether the case should be reconverted to one under Chapter 7 so the Chapter 7 Trustee may proceed with the liquidation of assets rather than having the case dismissed pursuant to the Debtor's qualified right to so do.